IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1523 OF 2001

M/s.Vijay Silk House Ltd. & Anr. .. Petitioners
V/s
Union of India & Ors. .. Respondents.

Mr.K.R.Bulchandani i/by M/s.Kamal & Co. with Ms.L.K.Bulchandani and Mr.Vikas Takalkar for the Petitioners.

Mr.R.V.Desai, Sr.Counsel with Mr.Rajiv Chavan with Mr.P.S.Jetley for the Respondents.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.

DATE : 06/07/2005.

P.C.:

1. By this petition, the Petitioners are challenging the order dated 17th April, 2001 passed by the Joint Secretary to Government of India in a Revision Proceedings whereby the Revisional Authority has set aside the order of the Appellate Authority dated 30th June, 2000. The Petitioners have prayed that the order of the Revisional Authority dated 17th April, 2001 be quashed and set aside and the order of the Appellate Authority dated 30th June, 2000 be restored to file.

2. The brief facts are that the Petitiones are the large scale exporter of textile fabric. It appears that the Petitioners after buying fabrics, cut it and repack it under the seal of excise officials, and under the supervision of the Excise & Customs officials the goods are exported after full scrutiny and verification. It appears that after the goods were exported in August, 1995 some investigations were conducted wherein it is

alleged that the goods exported were not the very same goods, and as such, 14 show cause notices were issued with regard to the exports made in the year 1991-92. The show cause notices were issued six years later i.e. in the year 1997-1998 with regard to 233 rebate claims raising the refund demand in the sum of Rs.61,25,647.15 paise. It appears that all the show cause notices were duly adjudicated upon and after due verification of the records of the Petitioners with the documentary evidence, it appears that 12 of the show cause notices were dropped completely on merits and only with regard to 2 show cause notices the demand was made in the sum of Rs.4,22,232.77 paise and in the sum of Rs.4,67,752.18 paise covering the 21 and 9 rebate claims. Finally, after scrutiny, out of 21 rebate claims, 13 refund claims were dropped absolutely and out of 9 rebate claims 8 refund claims were dropped absolutely leaving the balance amount of Rs.1,71,625.80 paise. It may be noted here that originally the total refund claim was in the sum of Rs.61,25,647.15 paise. Finally after full fledged hearing, the authority came to the conclusion that the Petitioners were liable to refund Rs.1,71,625.80 paise. In the order passed by the Additional Commissioner of Central Excise dated 28th March, 2000, a sum of Rs.1,71,627.37 paise by way of refund was demanded, and the penalty in the sum of Rs.25,000/- was imposed on M/s.Vijay Silk House Limited (Petitioner No.1 herein) and the penalty in the sum of Rs.25,000/- was imposed on Mr.Dilkhush R.Doshi, being the Director of M/s.Vijay Silk House Limited (the Petitioner No.2 herein).

3. Aggrieved by the said order, the Petitioners had preferred an appeal before the Commissioner of Central Excise (Appeals). Before the Commissioner of Central Excise (Appeals), the Petitioners had taken a preliminary objection that the show cause notices were patently time barred. Over and above the Petitioner had also submitted that the even on merits the refund demand ought not to have been allowed. Finally the Commissioner of Central Excise (Appeals) by his order dated 30th June, 2000 came to the conclusion that the aforesaid show cause notices were all barred by law of limitation under Section 11A of the Customs Act. Even on merits, the Commissioner of Central Excise (Appeals) found substance in the contentions of the petitioners and therefore the order demanding refund as well as imposition of penalty was set aside by the Commissioner of Central Excise (Appeals).

4. Aggrieved by the said order, the Respondents herein had preferred the revision before the Revisional Authority being the Joint Secretary to the Government of India, who after hearing both the parties, by his order dated 17.04.2001 came to the conclusion that as far as Rebate Claim No.9 in the sum of Rs.19,797.50 paise, ought to have been given to the Petitioners. The order passed by the Commissioner of Central Excise (Appeals) was modified in the sense that, for the balance amount the petitioners were held liable to pay and even the penalty amount imposed on Company as well as the Director was upheld. Aggrieved by the said order of the

Revisional Authority the present petition has been filed.

5. We have perused the original order of demand of the refund claim as well as the order of the Appellate Authority being the Commissioner of Central Excise (Appeals). We have also perused the order passed by the Revisional Authority. The Appellate Authority being the Commissioner of Central Excise (Appeals) has exhaustively considered all the material which was placed before him and has come to the conclusion on merits that the explanation given by the petitioners were quite reasonable and credible in the sense if certain goods were found defective the said goods were replaced by same kind of goods again, and in that context, the Appellate Authority has also dealt with the issue of Gate Passes being issued in that behalf. Paragraph Nos.9 and 10 of the said order of the Appellate Authority being the Commissioner of Central Excise (Appeals), in detail, analyses that the explanations of the Petitioners were quite reasonable and there was no case of any fraud in the rebate claims. Over and above, the Appellate Authority has also given a finding that the show cause notices issued with regard to refund claims were clearly barred by the law of limitation under Section 11A of the Act.

6. The Revisional Authority appears to have not fully looked into the entire record produced before the Revisional Authority, in as much as the Revisional Authority has stated that no documentary evidence was

produced with regard to the defective goods and subsequent replacement of the said goods. On the contrary, a perusal of the order passed by the Appellate Authority clearly indicates in paragraph No.3 of its order that the Appellants' claim of replacement of defective fabrics without changing the sales invoice was creditable. The order of the Appellate Authority also mentions that the paper book containing relevant invoices with regard to each of these shipping bills have been submitted during the personal hearing. Therefore the finding of the Revisional Authority that the petitioners did not produce any documentary evidence is totally unsustainable. The Revisional Authority has also observed that the Petitioners have not submitted any reply to the show cause notice dated 10th October, 2000. The show cause notice dated 10th October, 2000 was issued to the Petitioners alongwith the grounds of Appeal. Obviously therefore, at that stage, no reply was needed to be filed. In any event, the learned Counsel for the Petitioners has pointed out that the reply in fact had been filed with regard to the same. The Revisional Authority in fact proceeded with the entire matter as if entertaining the Appeal and appreciating the sufficiency of evidence or otherwise, and has even given different finding while exercising the jurisdiction. The learned Counsel therefore submits that because of the apparent error, the order of the Revisional Authority cannot be sustained at all.

7. Mr.Bulchandani, the learned Counsel for the Petitioners has submitted that though the order of the

Revisional Authority may not be sustainable, the Petitioners are not keen that the matter may be remanded back to the Revisional Authority. He however states that the Petitioners are desirous to put an end to the entire matter and hence they are not contesting the same, and are ready and willing to pay Rs.73,762.81 paise, even though the said amount is disputed by the Petitioners.

8. Having regard to the calculations, we find that out of Rs.1,71,626.20 paise which is claimed by way of refund, the Revisional Authority has granted a rebate claim Rs.19,797.50 paise in favour of the Petitioners, thereby leaving a balance refund claim of Rs.1,51,828.72 paise. There is no dispute and even the learned Counsel Mr.Desai appearing for the Respondents states that the Petitioners are entitled to rebate claim of Rs. 78,065.91 paise, thereby leaving a balance refund claim of Rs.73,762.81 paise. The learned Counsel for the Petitioners states that the Petitioners are ready and willing to pay to the Respondents the balance refund claim as they are desirous to put an end to the matter.

9. Now the issue is with regard to the imposition of penalty imposed on the Petitioner No.1 Company in the sum of Rs.25,000/- and the penalty imposed on Petitioner No.2 (Director of Petitioner No.1) in the sum of Rs.25,000/-. Having regard to the facts and circumstances of the case, and especially in view of large scale quantity of textile exported by the petitioners running into several crores of rupees

compared to the difference in material which is veru small, and having regard to the fact that the Respondents themselves have conceded with regard to the show cause notices and even the explanations given by the petitioners appear to be reasonable and credible, we are of the view that the penalty ought not to have been imposed on the Petitioner No.1-Company and the Petitioner No.2-Director. Hence, to that extent of imposition of penalty, the impugned order stands quashed and set aside.

10. The learned Counsel for the Petitioners has pointed out that at the time when the Petition was admitted the petitioners were directed to deposit a sum of Rs.1 lakh with the Respondents. Over and above, the learned Counsel for the Petitioners states that the Petitioners have also deposited Rs.51,828.72/-. We therefore direct the Respondents to refund the balance amount to the Petitioners, after giving credit to the amount of Rs.73,762.81 paise which the Petitioners are ready and willing to pay to the Respondents by way of refund demand. The balance amount shall be paid by the Respondents within a period of eight weeks from the date of receipt of the copy of this order. We make it clear if the Respondents do not refund the aforesaid balance amount within a period of eight weeks from the date of receipt of the copy of this order, the Respondents shall pay an interest at the rate of 9% p.a. on the said balance amount.

11. Writ Petition stands disposed of in the above

terms.

(S.RADHAKRISHNAN J.)

(J.H.BHATIA J.)